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SUBJECT: (SBU) Heart of Gold: "Business NGO" Legislation
Tightens in South China

REF: A) Beijing 1599 B) Guangzhou 011657 C) Chengdu 000742

Summary

¶1. (SBU) Faced with nearly insurmountable legal registration requirements foreign and domestic NGOs often turn to registering as a normal for-profit business, which is technically illegal. While widespread enforcement is rare, authorities in South China take advantage of the illegal status of the majority of NGOs to selectively target the ones deemed to be too controversial. NGOs themselves limit their activities by either informally working with the government on service activities (mainly health NGOs) or working independently (mainly labor, environmental NGOs) but avoiding activities that would cause undue attention on their organization. While new business registration guidelines which were issued in March 2005 did not have the effect of causing droves of unregistered NGOs to flock to the Ministry of Civil Affairs to register or shut down their 'illegal' activities they did contribute to an already unfriendly climate for NGOs in South China.

¶2. (SBU) Searching for relief from difficult formal registration laws many NGOs sought normal for-profit business registration as a way to have a legal entity in South China. One year after revised business regulations were promulgated we look at the impact of the rules that were meant to edge NGOs out from underneath the (illegal) umbrella of normal business registration to under the Ministry of Civil Affairs' (MCA) specialized NGO registration.

Registration by the book

¶3. (SBU) According to the Ministry of Civil Affairs' regulations all NGOs or non-profit groups are required to register with the MCA (ref A). Official NGO registration involves finding a government department or mass organization (such as the Communist Youth League or All Women's Federation) to sponsor the NGO and the NGO must adhere to a strict series of legal and organizational requirements. Sponsorship formally means that the government department reviews the NGO's finances and operations yearly but informally means the sponsor is going

to be held liable if the NGO hosts controversial activities. This makes government departments extremely reluctant to sponsor a NGO; it is seen as a high-risk, low-return proposition (ref B). There are also requirements that stipulate property requirements, a certain level of registration capital, a list of members must be submitted, and the NGO can only do activities delineated in the charter. During the course of this lengthy investigation every prospective NGO office is personally visited by a MCA investigator. In addition, foreign NGOs are only allowed to register as foundations, which carries an even more onerous set of restrictions (septel). Foreign NGOs are not allowed to register for the two other types of NGOs, social organizations and non-profit professional units.

A Back Door for NGOs?

¶4. (SBU) Since most local (Chinese-founded) NGOs cannot find a government sponsor and most foreign NGOs cannot find a sponsor or meet the strict foundation regulations many NGOs turn to for-profit (normal) business registration as the way to have a legal identity. NGOs registered as normal businesses (business NGOs) are technically illegal (because they should register with the MCA) and the head of the NGO registration bureau for Guangdong Province flatly denies the existence of this kind of 'back door.' However, because there is little enforcement many NGOs openly choose this method of registration because it allows them to have an organizational bank account and an official chop/seal without going through the onerous formal NGO regulations.

Business Registration 101

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¶5. (SBU) The process of registering as a business is fairly straightforward. It usually takes about 20 days and involves no site visits, inspections or need for a government sponsor. According to one Guangzhou MCA official, registering as a social organization requires a six-month pre-registration phase; two foreign NGOs that were trying to register as a foundation (a different sub-type) stated they have been waiting for well over a year for their registration review to be complete (septel).

¶6. (SBU) There is a registration capital requirement of RMB 30,000 - 100,000 (USD 3,750 - USD 12,500) for business registration, but it is quite a bit less than the RMB two-eight million (USD 250,000 - USD one million) required for NGO foundations (the only way a foreign NGO can register). In addition, several NGOs stated that there are companies that regularly provide the service of (illegally) providing the funds for business registration capital and retaking it after the business license is approved. There are even legal ways of getting around the requirement as one legal-aid NGO said they were able to get the registration capital requirement waived because they were only setting up a small consulting company. Some NGOs have also been able to work out systems for avoiding the payment of business taxes. Business NGOs usually try to spend all of their yearly funds before the tax-year ends and therefore claim no profit and thus avoid paying taxes.

The Government Attempts to Shut the Back Door

¶7. (SBU) This route became more difficult March of last year when the business registration regulations were amended so that 'businesses' could no longer use the name "research institute" or "association" in their name. This action was clearly directed at NGOs that sailed under the 'flag of convenience' of business registration. This notice was placed on a local MCA website and most business NGOs were aware of the change. Enforcement of the new regulations was

not widespread however. According to local MCA officials there is no formal enforcement structure and only if an illegal NGO comes to their attention will they address the problem. Two municipal officials and one provincial MCA official separately confirmed that there was no spike in MCA registrations after the rule was changed. Based solely on numbers, the rule seemed generally ineffective as a tool for promoting MCA registration or causing the widespread shutdown of business NGOs.

However, It Is Not Quite Closed Yet

¶8. (SBU) While most business NGOs were aware of the new rules, few knew organizations that had shutdown or had re-registered. One independent HIV/AIDS business NGO in Guangxi said it had such close cooperation with the government (health department) that it was not concerned about being shut down or otherwise penalized. It is common in South China for some unregistered NGOs to cooperate with the government on an informal basis, particularly in the health sector (ref B). NGOs that have this kind of informal cooperation with the government often focus mainly on service activities and care of people with illnesses. For example unregistered NGOs in South China cooperate with government departments to give free counseling to AIDS/HIV patients, to provide medical assistance to leprosy victims, to provide medical care to children orphaned due to AIDS, and prostheses to handicapped children. All NGOs interviewed separately concurred that unless you hosted (or were suspected of) very controversial activities there was little chance of being shut down or heavily pressured by the police. The penalties for not registering with the MCA mainly seem to entail having a business registration revoked or, if unregistered, your office and bank accounts can be closed. Few representatives from unregistered NGOs had concerns about being jailed, even though several believe that they are under active surveillance by the government.

CWWN: The Tale of One "Controversial NGO"

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¶9. (SBU) The Chinese Working Women's Network (CWWN) is a progressive `business NGO' that works on legal aid, health education and labor organization. While it had coordinated with the Ministry of Health in the past for its health bus (a traveling van equipped with health and labor information for female migrant laborers), last year the Ministry's provincial-level department in Guangdong had begun to ask for its registration documents. The NGO's officials were told that its business license, which had always been sufficient in the past, was no longer enough. After this, CWWN received a notice at their Shenzhen (Guangdong Province) female migrant labor center that it needed to immediately report to the MCA to register. The project coordinator stated that the increased scrutiny and registration notice was probably due to their identified contributions to reporting in the Hong Kong press about labor conditions in Shenzhen.

CWWN: Actively Organizing Underground

¶10. (SBU) With no hope of finding a government department to act as a sponsor, CWWN officials closed their center and began operating secretly, moving their drop-in center office 3-4 times in the past year. After closing the Bao'An center they also shifted to focusing more on factory activities. They target medium-size Chinese factories of at least 300 people that have minimal security around their dormitories. CWWN's staff intensively works with the group of workers educating them about their rights and helping them to organize into a community support network. They currently work with approximately ten factories and have 16 support

networks of 15-100 workers already established throughout the corridor between Guangzhou and Hong Kong. When entering a new factory they help the workers to identify a leader and work on training and gradually move from social topics to health and labor topics. Funds are mainly raised in Hong Kong and are physically brought over when employees travel back and forth. CWWN also maintains its previous activities such as the health bus but the staff states the NGO environment in general is much more difficult to work in. Interestingly, with all the problems it faces, CWWN still enjoys the support of a local university, which allows it to store the health bus and training materials on campus.

CWWN: Plans For The Future

¶11. (SBU) Realizing that it needs a more permanent base of operations the organization is considering a move to a neighboring city, Dongguan. Its previous business registration was as a company in Shenzhen but CWWN staff are now looking to open a bookstore in Dongguan. The project coordinator thinks the bookstore will give them good cover and a traceable stream of income to bolster its business registration. Dongguan is also widely recognized as the city with the worst labor conditions and relatively lax government controls on labor infractions.

Comment: Just Another Hammer in the Toolbox

¶12. (SBU) While the majority of NGOs in South China anecdotally seem to be unregistered, business registration still seems to be the next most popular method of operating, despite government disapproval of the method. Over the past year the government seems to be constricting the space improperly registered NGOs can operate in while releasing tantalizing hints of new, broad NGO legislation that is supposed to be in the pipeline (ref C). This aura of legal uncertainty seems to push NGOs into one of two camps; in both camps their activities veer away from the controversial or confrontational. In one camp are NGOs that are able to work out an informal understanding with a local health department or disabled association and end up mainly focused on providing services with only a limited or non-existent 'traditional' advocacy role. In the second are NGOs that operate more independently (mainly labor, environmental NGOs) and rely on staying off the official radar screen by hosting low-key or uncontroversial activities. CWWN seemed to break two important rules; it focused too intently on direct labor organizing and went to the press with

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embarrassing information. When a NGO gets too out of line, like CWWN did, it can easily be punished with one of the many legal tools from the registration toolbox.

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